

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION**

**DIANA COATES, and  
MARGO GREEN,**

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C.A. No. 3:10-CV-71

**BRAZORIA COUNTY, and  
JAMES BLACKSTOCK,**

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## Defendants.

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## JURY TRIAL DEMANDED

## **PLAINTIFFS' AMENDED PROPOSED QUESTIONS FOR VOIR DIRE**

Diana Coates and Margo Green, plaintiffs, submit the following proposed questions for voir dire. Due the complexity of the case and the sensitive topics dealt with by the allegations on both sides in this case, Plaintiffs request that they be provided at least the 90 minutes offered by the Court. Plaintiffs submit the following questions to provide the Court with examples of the types of questions that will be asked. Follow-up with respect to the answers is critical and Plaintiffs respectfully requests that they be permitted to conduct the voir dire. Not all questions will be requested or used depending upon the amount of time permitted and the answers to the questions.

### **Proposed Questions**

What local cases can you think of whose outcome had an effect on the community?

Some folks are uncomfortable about making decisions on a jury that might have an effect on the community. Others are ok with it. Which are you closer to?

Some folks feel it's a good thing for the result of trials to have an effect on the community. Others are uncomfortable about it. Which folks are you closer too?

Can you think of outside cases that had an effect on this community?

How do you feel about trials having an effect on the community?

You will hear that there are clear rules that employers must follow regarding how they treat their employees, what is allowed and what is not allowed. In this case, the plaintiffs will argue that one set of those laws apply. The employer will argue that those laws do not apply to them. Who here will have a problem hearing both sides and deciding which rules you want in this community?

Sometimes a person sues someone not only to get justice for a wrong, but also to make sure it doesn't happen again. Some folks think that's not a proper use of the court system. Others are okay with it. Which folks are you closer to?

This case involves people who lost their job. Everyone will feel sympathy. Nothing wrong with that, but you cannot factor your sympathy for the employees who lost their job, Ms. Coates, Ms. Green or for the defendant, Brazoria County, in fact, it would violate your oath to factor your sympathy which you may have into this case. How do you feel about that?

Some folks are okay with making that kind of decision; others might have a problem with it. Which are you a little closer to?

Though you have to factor out sympathy, one of the things you have to factor in is the law: did the employer follow the law and do they follow the law enough to employ people from this community? Some folks are uncomfortable judging whether an employer has followed the law enough to employ people from this community. Others are not. Which group are you a little closer to?

The County says it did nothing wrong, that it followed the law and acted to protect its employees – but if you believe that the County did not follow the law and did not act to protect its employees, what trouble would you have, even a little, in deciding on a verdict that would show the County that it has not done enough for the community?

In a criminal case, when someone guilty is convicted, we are all better protected. In a civil case, when someone breaks the law, and so causes harm, and is held responsible, we are all better protected. Some folks feel that this is more important in criminal cases than in civil cases. Others feel it's just as important in both. Which group are you a little closer to?

Trials can have far-reaching effects. We all know about the McDonald's coffee case. And, we all know about the Ford Pinto gas tanks that exploded and the jury held them accountable. Some folks hesitate in being a juror whose decision might have far-reaching effects. Others are okay with it. Which group are you a little closer to?

As you heard in the video, the law requires civil cases to be tried by a jury in the community where the act happened. Why do you think it's important to try cases in the community where the act occurred?

How does that benefit the community?

Who here has heard of any civil jury verdicts around here based on something such as sexual harassment or discrimination where someone lost their job because of that?

Some folks feel that it's necessary for the community to know what the jury has done in those kinds of cases. Others feel it makes no difference. Which group are you a little closer to?

Someone once said that a jury is “the guardian of the community.” Some folks are uncomfortable being asked to be a guardian. Others are okay with it. Which are you closer to?

In trials like this, jurors make their decisions on the basis of whether my side is more likely right than wrong.

Some folks think more likely right than wrong is not fair because it makes things a little too easy on my side and a little too hard on the defense, because my side doesn't really have to prove anything

Other folks feel that it is OK

So, Ms. Juror, are you a little closer to the people who think it's a little unfair, too easy for my side? Or are you a little closer to folks who think it's OK?

I had to ask about this because in this case you will be *required* to make all your decision on the basis of whether we're more likely right than wrong.

We expect to show you far more. But by the end of the trial, even if someone thinks we're just *slightly* more right than wrong on a question, you'll have to decide that question in our favor.

You can have all the doubts you want on both sides. But when you weight them all out, if you think we're more likely right than wrong, even by a little bit, then the law says you must decide in our favor.

Mr. Defense Attorney agrees that you have to base all your decision on whether our side is more likely right than wrong. And His Honor will tell you that more likely right than wrong is the law you must follow.

Some folks feel that human resources is there to protect employees, Some folks feel that human resources does not protect employees from anything, which way do you lean?

Some folks feel that the personnel policies of a company or a county are really just guidelines for how the county or company can act, other folks feel that those personnel policies are promises that are made by the county or company that must be followed, which way do you lean?

How do you expect Human Resources to treat employees?

Say, for a problem with your vacation or benefits?

What about if you make a report of something more serious, like someone is making racial comments or someone has sent you an email with a racist or sexist joke?

Tell me about that. What would you expect Human Resources to do?

Would you expect Human Resources to help an employee deal with a problem like a sexist email?

How would you expect a Human Resources department to treat employees with respect?

Do you expect an employer to conduct a full and fair investigation if there is a complaint against an employee?

Some folks feel that if something happens to them while at work, that the employer can just make a decision about it without investigating fully and fairly. Others feel that an employer must investigate incidents at work fully and fairly. Which group are you a little closer to?

Do you expect that the employer will consider the facts?

If an employee did something wrong, do you expect that the employee would be immediately terminated?

Especially if the employee denied that they did something wrong and it was a he said/she said case or a misunderstanding between the parties?

If it is a case of he said, she said in the work place, some folks feel that both of them should be fired, no questions. Others folks feel that some evaluation of who is telling the truth should be made. Which group are you a little closer to?

Some folks feel that having a job is one of the most important things in America. Other folks feel that a job is just a job, and you can always find another. Which group are you a little closer to?

Some folks feel that without a job, a person will not be able to support their family, keep their home, or feed their children. Other folks feel that not having a job is not that important, that they can always find someone to help, whether it is the government or friends and family. Which group are you a little closer to?

I have heard that many people have strong and negative feelings about trial lawyers. Have any of you heard that?

I have heard that many people have strong and negative feelings about sexual harassment suits. Have any of you heard that?

Some folks feel that comments at work are just jokes and do not really mean anything. Others feel that jokes at work or things said can be hurtful. Which group are you a little closer to?

Some folks feel that if a woman says she has been sexually harassed, that she must have done something, dressed a certain way, somehow the woman invited what was being done to her. Other folks feel that the one to blame is the harasser, which group are you a little closer to?

Some folks feel that if a woman says she has been sexually harassed, that she is being overly sensitive to what has happened to her, other folks feel that certain things should not be done or said in the workplace, which group are you a little closer to?

Some folks feel that if a woman says she has been sexually harassed, that it is her fault, men will be men, Other folks feel that the person doing the harassing should be found at fault, Which group are you a little closer to?

Some folks feel that the employer is in total control of its employees. Those folks feel that the boss is the boss. Others feel that an employer or boss must follow certain rules about how it treats its employees. Which group are you a little closer to?

Some folks feel that it is easier to find a job these days than it was five years ago. Others feel that it is harder to find a job. Which group are you a little closer to?

Some folks feel that when it comes to job security, Americans have more job security now than they did five years ago. Others feel that your job is less safe today. Which group are you a little closer to?

Some folks feel that bosses treat their employees better now than they did five years ago. Others feel that bosses treat employees worse. Which group are you a little closer to?

Some folks feel that bosses have more power than five years ago because they have more choice of potential employees. Some feel that bosses have less power because there are fewer employees out in the work force. Which group are you a little closer to?

Some people think that employees that complain about matters in the workplace are just whiners, others think that people who report problems in the workplace have a right to speak out and that it makes the workplace better, which way do you lean?

Some folks feel that companies or counties can decide that an employee is making too much trouble at the workplace, and that they can terminate them whenever they want, other folks feel that the law provides some protection when an employee has done certain things, like report sexual harassment. Which way do you lean?

How do y'all discipline your children?

Do you make the punishment fit the crime?

Or back when people spanked kids, did you just spank them for anything they did wrong?

Nowadays, there is a lot of “time outs” going on. Sometimes it works, sometimes it doesn’t, but either way, do you try to teach your kids to do better?

Some folks feel that if an employee makes a mistake or does something wrong, that they should be fired immediately. Other folks feel that no one is perfect and when an employee makes a mistake, that the punishment should fit the crime. Which group are you closer to?

Some folks feel that employers have the right to fire someone, no matter what, other folks feel that employees ought to be given a chance to fix their misstates, we call it progressive discipline, which group are you closer to?

Going to have to show you some things in this case that are uncomfortable to see, hear, and watch. These images, words, and videos are graphic, and by graphic, I mean in a sexual manner.

Some of these materials show naked women, their genitals, and depict some sex acts. Some of these materials are sexually explicit, foul and obscene. Some folks are uncomfortable even seeing or hearing such things. So, I need to ask if there is anyone who would not be able to view such things in the light of this case.

Some of the information in this case involves fetishes and alternative sexual activity. Is there anyone who would be uncomfortable even looking or hearing about such activities?

Some folks are completely offended by sexually explicit, foul or obscene materials, and other folks feel that they are not really that offensive. In this case, there will be graphic images which are obscene. Which group are you closer to?

Some folks feel that sexually explicit, foul or obscene materials are ok to look at and send to others, other folks feel that sexually explicit, foul or obscene materials should never be viewed. Which group are you a little closer to?

Some folks feel that sexually explicit, foul or obscene materials are ok to look at and send to others at work, other folks feel that sexually explicit, foul or obscene materials should never be sent to anyone at work. Which group are you a little closer to?

Some of the material will be in the form of jokes. Some folks feel that sexually explicit, foul or obscene jokes are ok to look at and send to others at work because, hey, it's just a joke. Other folks feel that sexually explicit, foul or obscene jokes should never be sent to anyone at work. Which group are you a little closer to?

I need to ask you how you feel about lawsuits.

Many folks on TV, in government, on the Web, and in newspapers, are concerned with what they call "tort reform": too many lawsuits, frivolous lawsuits, big verdicts, runaway juries, greedy lawyers, greedy clients, and verdicts making prices go up and driving away jobs and businesses from our community.

As a result, some folks think that the court system needs changes. Others think things are okay as they are. How many of you are closer to the folks who think we need some changes? Who's closer to the folks who think things are okay as they are? Who's in the middle?

How many Republicans? How many Democrats? How many Methodist? How many Catholic? How many Jewish?

Everyone has a bias towards their own political affiliation and religion.

This is the strength of our democracy. Our diversity and our differences of opinions. This is what makes our Country work.

As you will recall in the video you saw, our diversity, and the diversity of a jury called from the community is the strength of our jury system.

Some people are biased against lawsuits in general. If you feel this way, that's ok, but I know you understand my job as a lawyer is to have you be honest and tell us how you feel?

On a scale of 1 to 10, how strong is your bias against lawsuits?

Mr. Juror having honestly said that you have a bias against lawsuits, despite your best efforts during the trial to ignore this bias, the plaintiff would start off with a strike against her?

How do you feel that situation is likely to work out?

Why?

What are you doing for a living?

Is that what you expected to be doing in your life?

Do you feel that you have done better in life than you originally thought you would do or are there things that held you back?

How do you feel about the future? Are things likely to get better for you?

Stay about the same?

Get worse?

What would you like to do next?

When you first heard about this case, what was your reaction?

What were you thinking?

What do y'all think is the most important thing to teach your children?

I understand that most people don't have time to do much for others outside their families, but I'd like to know: Who here is involved in things intended to help other people – people outside your family?

What organizations and clubs do you belong to?

Where do you do volunteer work?

If you used to do charitable work, but stopped, why did you stop?

What would make you go back to doing that charitable work?

What charities do you support?

Do you send money?

Do you volunteer?

Anyone an officer in one of those groups or clubs?

What do you do evenings after work?

What do you do Saturdays?

What do you do Sundays?

What should be done about the homeless?

Mr. Juror, in cases like this, jurors get to see the wages that an employee lost when she was fired. So, if you were a juror in this kind of case, and you decided that the employer did something that hurt a person and caused the loss of wages what trouble would you have – even if a little – allowing money in your verdict for those lost wages?

There will be some big numbers discussed in this case. Is there anyone who has already decided on a maximum amount of damages beyond which you could not award, even if the evidence supported such a claim?

What trouble would you have allowing money in your verdict for pain and suffering?

Many folks have some trouble allowing money for pain and suffering or mental anguish because it doesn't make the pain and suffering or mental anguish go away. Other folks think money for pain and suffering or mental anguish is ok. How

many of you are a little closer to the folks who think money for pain and suffering or mental anguish is ok? And how many of you are a little closer to the folks who think there's no point because, say, it doesn't make the pain go away, or for some other reason?

How many of you are in the middle?

Mr. Juror, in cases like this, jurors hear about pain and are asked how much money to allow for it. I do not mean money for medications or therapy. Those are other categories. Right now, I just mean money for the fact that someone is having pain.

Some folks have trouble allowing money for pain and some others are OK with it. Which are you a little closer to?

Some folks have some philosophical, moral, or other reason for not allowing money for pain. Others are OK with it. Which are you closer to?

Mr. Juror, in cases like this, jurors hear about pain and are asked how much money to allow for it. I do not mean money for medications or therapy. Those are other categories. Right now, I just mean money for the fact that someone is having pain.

Some folks have trouble allowing money for pain and some others are OK with it. Which are you a little closer to?

Some folks have some philosophical, moral, or other reason for not allowing money for pain. Others are OK with it. Which are you closer to?

Mr. Juror, in cases like this, jurors hear about inconvenience and are asked how much money to allow for it. I do not mean money for medications or therapy. Those are other categories. Right now, I just mean money for the fact that someone is having pain.

Some folks have trouble allowing money for inconvenience and some others are OK with it. Which are you a little closer to?

Some folks have some philosophical, moral, or other reason for not allowing money for inconvenience. Others are OK with it. Which are you closer to?

Mr. Juror, in cases like this, jurors hear about mental anguish and are asked how much money to allow for it. I do not mean money for medications or therapy.

Those are other categories. Right now, I just mean money for the fact that someone is having mental anguish.

Some folks have trouble allowing money for mental anguish and some others are OK with it. Which are you a little closer to?

Some folks have some philosophical, moral, or other reason for not allowing money for mental anguish. Others are OK with it. Which are you closer to?

What kinds of information would create greater problems for you in allowing money for mental anguish?

What kinds of information would make it easier?

I'm not asking if you know how to do it; that will be covered later in the trial. All I'm asking now is whether you're closer to the folks who would not want to do it even if they knew how or closer to folks who'd be OK with it.

The judge, at the end of the case will tell you that you can allow money for future damages if you believe that they have been proven.

What trouble would any of you have -- even if just a little -- in allowing money for future damages?

The judge, at the end of the case will tell you that you can allow money for future damages if you believe that they have been proven. You will be told that you can only allow money for such damages against James Blackstock, not the County.

As y'all know, this case involves government employees. Some folks think that government employees are of a certain class, i.e., they don't work hard, or they are just set for life. Other folks think government employees give up a chance for big profits in the private sector for the security of working for government. Which group are you closer to?

What trouble would any of you have – even if just a little -- in allowing money for punitive damages?

In cases like this, jurors figure out how much money should be in the verdict. To figure this out, jurors take two things into account: The harms and the losses the defendant caused. Nothing else.

Some folks think that's not fair. They think it's fairer to factor in, say whether the money can do some good, or whether the money is too small, or whether it might seem like too much for one person, or whether a large verdict might raise prices for things we all have to buy, or whether their bank fees might go up, or whether the person has another source of money, or whether it might hurt business.

Other folks feel they should just stick to the harms and losses.

Who here might be a little closer to folks who think they should consider more than just the harms and losses the defendant caused?

Who might be a little closer to folks who stick to just the harms and losses?

Anyone in the middle?

I had to ask you that last question because you will be required to figure out what money to allow based only on the harms and the losses the County and Mr. Blackstock caused in this case.

You cannot lower or raise your verdict for any other reason.

You cannot worry about sympathy, the costs of groceries, bank fees, the costs of trying this case, or any other topic.

Now, knowing that, who might have even a little trouble factoring out everything except the harms and losses?

Just harms and losses. The Defense Attorneys agree: You must determine how much money only on the basis of the harms and losses the County and Mr. Blackstock caused. At the end of the trial, the judge will tell you it's the law.

Some of the harms and losses in this case will involve wages, benefits of employment, retirement losses, stress, mental anguish, pain, suffering, inconvenience, and other effects on Ms. Coates and Ms. Green's lives and their financial safety.

Folks, Jurors have two important rights and I need to ask you about them.

First: Jurors have the right to hear all the testimony. So, during the trial, if a witness says something you don't hear, will you be ok with raising your hand and saying: "Your Honor, I did not hear the witness; would you ask her to say it again?"

Everyone okay with that?

Here's an even more important right: Jurors have the absolute right to be on a jury that follows the law. No one – not me, not Ms. Defense Attorney, not another juror, not even her Honor – is allowed to put you in a position where you have to go home afterwards knowing you've been on a jury that violated your oath by ignoring or violating the law when making its decisions.

So, in deliberations, if someone is not following the law, will each of you be willing to have your foreperson knock on the door and tell the United States Marshal that you need the judge to come talk to a juror who is disobeying the rules?

Okay? Show of Hands. Good.

Everyone is going to remember to do that? Good.

And will you yourself be careful to follow the Judge's instructions and laws so it won't be necessary for other jurors to do that?

Show of Hands? Good.

Additional questions as needed to explore potential bias of the jury.

Additional questions depending upon the Court's rulings on the evidence and motions in limine.

These are general questions and are not intended to, nor do they limit, the full exploration within the applicable rules and rulings of the Court of any potential bias of jurors.

Additional questions may be necessary to determine the propriety of peremptory challenges which cannot be foreseen at this time.

Respectfully submitted,

JACQUELINE A. ARMSTRONG

*/s/ Thomas H. Padgett, Jr.*

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that on February 14, 2013, I electronically filed the foregoing Motion in the Southern District using the Court's ECF system which will transmit a Notice of Electronic Filing on all other counsel of record.

*/s/ Thomas H. Padgett, Jr.*

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Thomas H. Padgett, Jr.